ORIGINAL

COVAD™
COMMUNICATIONS COMPANY

Jason Oxman
Senior Government Affairs Counsel

Direct Dial: 202-220-0409

20 January 2000

Mr. William Kehoe, Esq.
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Deployment of Wireline Services Offering Advanced Telecommunications Services, CC Docket No. 98-147, Petition for Partial Reconsideration and/or Clarification of Sprint Corporation.

Dear Mr. Kehoe:

Covad Communications Company (Covad) submits this *ex parte* pursuant to the Commission's consideration of Sprint Corp.'s Petition for Partial Reconsideration and/or Clarification of the FCC's *First Report and Order* in CC Docket No. 98-147. In its petition, Sprint asks the Commission to clarify or modify certain collocation rules and regulations adopted in that proceeding. Because the record in this proceeding has raised certain issues that are of vital importance to the competitive deployment of broadband services, Covad now emphasizes the following vital points.

1. The Commission must adopt collocation provisioning intervals to remove the most important barrier to rapid deployment of advanced services.

The collocation rules adopted in the Commission's *First Advanced Services Order* were designed to "optimize the space available at incumbent LEC premises" and "reduc[e] the cost of collocation for competitive LECs."[1] Nearly a year has elapsed since the Commission adopted the Order requiring incumbent LECs to provide cageless collocation, and there are still *entire BOC regions* where Covad has been unable to secure a single cageless collocation site pursuant to the Commission's rules. The reason? The

[1] *First Advanced Services Order*, FCC 99-48, at ¶ 39.

Commission unfortunately left a single, crucial element out of its rules: provisioning intervals. Thus, incumbent LECs have paid lip service to the FCC's cageless collocation rules, accepting applications for cageless arrangements, but then taking months to return price quotes, and then many more months to provision cageless arrangements. Cageless collocation is the simplest of cageless arrangements: competitive LECs are permitted to collocate in "any unused space in the incumbent LEC's premises."[2] Yet the absence of provisioning intervals has made it impossible for Covad and other competitive LECs to gain access to cageless collocation.

The FCC had a legitimate justification for its failure to adopt cageless collocation intervals at the time of its March, 1999 order: "we do not yet have sufficient experience with the implementation of these new collocation arrangements to suggest time frames for provisioning."[3] But now, the record in this proceeding reflects the experience that certain incumbent LECs, state commissions, and the FCC have had with cageless collocation. More importantly, the record reflects the serious anticompetitive actions of certain incumbent LECs in refusing to provision cageless collocation in a nondiscriminatory manner.

Covad respectfully requests that the Commission take advantage of the experience with cageless collocation reflected in the record and adopt cageless collocation provisioning intervals. The FCC should not leave the adoption of such intervals to state commissions, because the majority of those commissions have yet to commence proceedings regarding collocation intervals. Covad agrees with Bluestar that a concrete national rule will ensure that incumbents can no longer thwart the good intentions of the Commission's collocation rules by simply refusing to provide collocation until they decide enough time has passed to thwart competition.[4] The adoption of provisioning intervals is the single most procompetitive step the Commission can take to ensure that its collocation rules are fully implemented by incumbent LECs that thus far have sought to delay their availability.

Interestingly, the record reflects that ILECs are raising the exact same argument in opposition to national collocation intervals as they did to national collocation rules.[5] This is not surprising: having lost their fight against new, procompetitive collocation rules, they have seized upon the lack of provisioning intervals as a means of delaying competition, much as they did with pre-cageless collocation arrangemets. The Commission must bring an immediate end to this practice. Covad agrees with Rhythms that the FCC should adopt a 45 calendar day interval for collocation provisioning.[6] In adopting such collocation intervals, the Commission must ensure the following:

---

[2] *First Advanced Services Order* at ¶ 42.

[3] *First Advanced Services Order* at ¶ 54.

[4] *See Letter dated Nov. 19, 1999, from Norton Cutler, VP and General Counsel, Bluestar Communications, Inc., to Magalie Roman Salas, Secretary, FCC, CC Docket No. 98-147, at 1-2..*

[5] *See GTE Opposition* at 5 (Sprint "is trying to fix a problem that does not exist"). *Compare* U S WEST Comments, CC Docket No. 98-147, quoted in *First Advanced Services Order* at ¶ 24, n. 35, ("proposed Commission action on collocation 'aims to fix a problem that is not broken.'")

[6] *See* Letter dated Oct. 19, 1999, from Glenn Manishin, *et al.*, Rhythms NetConnections, Inc., to Bill Kehoe and Julie Patterson, FCC, CC Docket No. 98-147 ("Rhythms Oct. 19, 1999 *ex parte*).

1. The Commission must make clear that the provisioning intervals it adopts are to be measured in calendar days, not business days. In Covad's experience, incumbents have been unilaterally interpreting the FCC's rules as applying to business days, rather than calendar days. If the FCC does not make clear that its provisioning intervals are calendar day intervals, then incumbents will be able to continue their practice of adding additional time beyond that intended by the FCC (in the case of a 45 day provisioning interval, up to two extra weeks). The Commission must further ensure that the clock for the 45 day interval begins ticking on the day the CLEC *first submits* its collocation orders. Currently, ILECs game the system by rejecting orders, delaying the delivery of a price quote, and similar measures that stretch out the provisioning interval. The FCC must make clear that 45 days after a CLEC submits a collocation application for a central office, that collocation space must be fully provisioned and delivered to the CLEC. The 45 day deadline must apply regardless of what work needs to be done in the central office, to ensure that ILECs do not impose any delay at all in provisioning space. 45 days is more than enough time for installation of electric power, installing cabling, or whatever else must be done to prepare space. Only with a deadline imposed on them by law will ILECs have any incentive at all to get the job done quickly. Otherwise, delay is their game, and they always win it.
2. The Commission must ensure that the only way that an incumbent LEC can refuse to meet the FCC's provisioning intervals is to seek, and be granted, a waiver from the FCC before the provisioning interval expires. In Covad's experience, incumbent LECs find numerous reasons to excuse themselves from their own generous provisioning intervals, citing the need for building permits, construction of additional stairwells, redesign of interior spaces, and other such excuses. The FCC should not let its rules be an option.[7] Because provisioning intervals would be federal rules, only the FCC should grant a waiver, and the Commission must not permit incumbents to delay provisioning collocation under the guise of "seeking a waiver" from the FCC. Every day that competitive LECs cannot access an ILEC central office is a day that consumers are denied a choice of telecommunications provider. The FCC must establish clear rules denying incumbents the ability to refuse to abide by federal provisioning rules unless the FCC expressly acts to grant a waiver before the provisioning interval has run.
3. The FCC must expressly require incumbents LECs to permit CLECs to transfer their existing virtual collocation arrangements, or pending virtual applications, to cageless, within ten calendar days of the request of the CLEC. Currently, incumbents have refused to permit Covad to transfer its virtual collocation arrangements to cageless arrangements. By way of background, Covad has collocated virtually only in those central offices where incumbents

[7] For example, GTE, perhaps the most egregious of the incumbent LECs in collocation practices, purports to provision collocation space in 90 days, but gives itself enormous latitude to miss its own deadline – excusing itself for reasons ranging from a delay in the arrival of materials to (oddly) GTE's failure to complete site preparation on time. The result is a "slipperly" interval: for example, GTE in California turns over collocation space on average more than six months after Covad orders it.

have claimed that no space is available for physical collocation. (Virtual collocation is not Covad's preferred collocation method, because it denies Covad access to its equipment and makes it difficult to provide quality of service to customers. It is, however, the only option when the incumbent claims space is exhausted, because Covad cannot otherwise serve customers at all.) After the Commission's March 1999 collocation order, incumbents "magically" began to discover space in their central offices, in the wake of the Commission's new rules. Yet incumbents refused to permit Covad and other competitive LECs to transfer their virtual arrangements to cageless. Rather, incumbents have required Covad to (a) reapply for collocation space, including payment of fees, (b) remove equipment from the virtual collocation space, and (c) reinstall the same equipment, often in space adjacent to the virtual site. Yet because CLECs are entitled to collocate in any unused space in the central office, there is no need whatsoever for ILECs to require such a transparently discriminatory relocation of equipment. This is the ultimate in absurd anticompetitive behavior. After two years of denying Covad space in central offices, and forcing virtual collocation arrangements, incumbents that "rediscover" space in central offices they once claimed were full are now requiring CLECs to start the multi-month collocation process all over again, further delaying competition. There is absolutely no change in facilities or procedures necessary for migration from virtual to physical (other than a change in the ILEC's attitude towards competition). The FCC should clarify that CLECs must be permitted to migrate their virtual collocation arrangments to cageless collocation arrangements, without moving equipment, without reapplying for space, and within ten days of the CLEC request for such migration.

4. The FCC should adopt collocation intervals as follows: in all cases, ILECs must actually provision fully functional collocation space within 45 days of the date that the competitive LEC first submits an application for space. In the *First Advanced Services Order*, the Commission established a presumption that "the deployment by any incumbent LEC of a collocation arrangement gives rise to a rebuttable presumption in favor of a competitive LEC seeking collocation in any incumbent LEC premises that such an arrangement is technically feasible."[8] The Commission should now utilize that "best practices" approach to adopt a national provisioning interval based on the collocation intervals actually deployed across the country.
    a. U S WEST, by interconnection agreement, makes collocation available within 45 days of the CLEC's first submission of a collocation order. (The Commission should note, however, that U S WEST's has made the interval into 66 days, because the 45 day period does not start until after a 21 day period for U S WEST to return a price quote has elapsed.)

[8] *First Advanced Services Order* at ¶ 45.

b. SWBT in Texas has a tariffed collocation provisioning interval of 55 days if a CLEC provides its own racking, or 70 days if the ILEC constructs the racking.

c. Bell Atlantic provisions collocation space 76 business days after CLEC order. Bell Atlantic also permits CLECs to begin installing their equipment in the collocation space on day 45 of the provisioning process.

5. The Commission must ensure that the provisioning intervals it imposes are firm and immovable. Any leeway left in the Commission's order will be immediately seized upon by incumbents and used to thwart the Commission's good intentions. The Commission should thus ensure that incumbents cannot modify the FCC's rules unilaterally. For example, despite the FCC's clear rule requiring incumbents to notify CLECs of space availability within 10 days,[9] SNET has imposed a "sliding scale" limitation on the number of offices it will report on, depending on how many collocation applications CLECs have filed. If SNET has more than a certain number of applications pending, it gives itself up to *fifty business days* to tell a CLEC if space is available – not the ten days the Commission's rule requires. Where is the justification for this arbitrary practice? Certainly not in the FCC's rules; rather, it is in the ILEC's continuing practice of blocking competitive entry any way it can. Incumbent have deliberately understaffed their collocation operations in an effort to claim "limited resources." Because incumbent LECs have no incentive to stop the discrimination and start serving CLECs like wholesale customers, they must be ordered to meet specific time frames by the FCC.

6. The Commission should also address security issues by clarifying *again* what it means by "permissible security measures." By requiring cageless collocation, the Commission explicitly rejected the argument of incumbent LECs that cages are necessary for the protection of equipment against sabotage. After nearly a year, incumbents have adopted their own "modifications" to the Commission's clear mandates, and Covad strongly urges the Commission to clarify the following and bring an end to incumbent game playing:

   a. If an ILEC wants to install a cage or other barrier around its own equipment, the ILEC itself must pay for such a cage – because a CLEC that chooses to cage it equipment must pay for that cage, simple principles on nondiscrimination apply. While the FCC permitted ILECs to enclose their own equipment, the FCC did not conclude that CLECs should be made financially responsible for such enclosures. Rather, the FCC expressly concluded that CLECs should share the cost only of central office security measures such as cameras or pass cards.[10] It is absurd to think that CLECs should have to pay for ILECs to enclose their own equipment, when the Commission has implemented an express rule ensuring that uncaged equipment is present throughout the central office.

---

[9] *First Advanced Services Order* at ¶ 58.

[10] *First Advanced Services Order* at ¶ 48.

b. Covad agrees with Rhythms that incumbent LEC arguments about potential sabotage to ILEC equipment are a hypothetical distraction from the real issue: further ILEC attempts to raise costs and reduce available space.[11] The Commission should grant no credence to ILEC arguments that, absent expensive and time and space consuming protections, CLECs will engage in a practice of harming ILEC equipment. There are two reasons this argument is specious. First, to suggest that CLEC technicians would violate federal law, which imposes heavy fines and jail time for interfering with local exchange services, all in an attempt to gain a competitive advantage, is ridiculous. Second, a CLEC technician that interferes with ILEC equipment will succeed only in providing grounds for the ILEC to terminate the CLEC's collocation arrangement, and thus the CLEC's ability to offer service out of that central office would come to a rapid end.

c. The Commission should further clarify that the security requirements it permitted ILECs to adopt in the *First Advanced Services Order* are not infinite. The Commission should reassert that it intended to ensure that ILECs "may not impose discriminatory security requirements that result in increased collocation costs."[12] Towards that end, in the *First Advanced Services Order*, the Commission concluded that ILECs can only adopt a limited spectrum of security arrangements in a central office – not the laundry list of expensive and delay-causing measures that ILECs had proposed. Importantly, the FCC specifically limited ILECs to a single arrangement: "We permit incumbent LECs to install, for example, security cameras or other monitoring systems, ***or*** to require competitive LEC personnel to use badges with computerized tracking systems."[13] The FCC made clear that ILECs could not continue their practice of installing multiple and duplicative forms of security, charging CLECs exorbitant sums, and delaying entry into central offices until they are more secure than most maximum security federal prisons. The Commission should clarify that, pursuant to the plain language of the *First Advanced Services Order*, incumbent LECs are permitted to install *either* security cameras or badge tracking systems, but not both. Regardless of security method utilized, the Commission must make clear that ILECs cannot delay provisioning while such measures are installed in central offices: as noted above, the Commission must ensure that the provisioning intervals are fixed and immovable, or else the ILEC will have a ready means of wiggling out of pro-competitive obligations.

7. The Commission should make clear that minor modifications to existing CLEC collocation space should not require new collocation applications, fees, and provisioning intervals. In Covad's experience, incumbents often require

---

[11] *Rhythms Oct. 19 ex parte* at 8-9.

[12] *First Advanced Services Order* at ¶ 47.

[13] *First Advanced Services Order* at ¶ 48 (emphasis added).

CLECs wishing to make minor modifications to their collocation space, such as relocating racks or increasing transmission capacity, to begin the collocation application process from scratch. There is no reason for this requirement, other than increased costs and delay.

8. The Commission should clarify that while incumbents may not limit the space in a central office that CLECs may occupy, the incumbents may engage in a nondiscriminatory process of selecting the space in a central office that CLECs may occupy, subject to stringent conditions. Specifically, ILECs have an incentive to "choose" space for CLECs that requires the most conditioning, which increases costs and provisioning time. In order to ensure that ILECs do not discriminate in the provisioning of space, the Commission should make clear that provisioning intervals are firm, regardless of the conditioning to space that must be performed (if work must be done, ILECs will get it done only as quickly as the FCC requires them to), and that ILECs must place CLECs in the lowest cost, most readily provisioned areas of the central office. Thus, for example, if an ILEC has warehoused space in the office for its own use, and the ILEC has an immediate demand for central office space from a CLEC, the ILEC may not reserve ready-to-use space for its own future needs while forcing the CLEC into high-cost space that must be conditioned. Rather, the ILEC must permit the CLEC to use the lowest cost, most readily available space in the central office.
9. The Commission should clarify that ILECs are permitted to warehouse space only for a reasonable amount of time. Currently, incumbents are unreasonably restricting available space in central offices by warehousing space for upwards of five years or more for themselves. This is an unreasonable restraint of available collocation space, and there is no valid reason for an ILEC to reserve space for more than two years. ILEC use of discriminatory warehousing practices has severely limited Covad's ability to compete effectively by accessing space in ILEC central offices. The Commission should require ILECs to subject themselves to the same reasonable, above the table warehousing obligations as they subject themselves. Specifically, the incumbent LEC must maintain a publicly available warehousing document, subjecting itself to a check by competitors on its warehousing practices. Such a document would allow competitors, and the FCC, to monitor warehousing practices and ensure that incumbents are not placing unreasonable restrictions on available space. This document, which should be posted on the incumbent's web site, should include a list of warehousing requests, including both CLECs and ILECs, such that when an immediate request for collocation space is received, the warehousing carrier, ILEC or CLEC, that is farthest down on the list should be forced to yield to the immediate demand.
10. Because of the recent popularity of ILEC separate affiliates used for the provision of advanced services, the FCC should make clear that any collocation arrangement entered into by the ILEC separate affiliate and the ILEC should be available to any CLEC. In addition, the separate affiliate should not be permitted to enter into a virtual collocation arrangement with

the ILEC, but rather should be required to enter into a physical collocation arrangement. A virtual collocation arrangement between the ILEC and its affiliate provides no beneficial protection against discriminatory physical collocation practices by the ILEC.

11. Finally, the Commission, sadly, must clarify its conclusion in the *First Advanced Services Order* that "an incumbent LEC may not refuse to consider an application for collocation space submitted by a competitor . . . before the competitor and the incumbent LEC have entered into a final interconnection agreement."[14] Ameritech, in its refusal to provision *even a single cageless arrangement* anywhere in its territory, has interpreted the FCC's order as requiring, apparently, only that it think about provisioning collocation, not that it actually provision it. "Nowhere in ¶ 53 does the FCC impose an obligation on the incumbent LEC to provision collocation space . . . Ameritech's sole obligation under ¶ 53 is to consider an application and process such an application."[15] Thus, Ameritech's specious interpretation of the FCC's strict requirement that it provision cageless collocation before an interconnection agreement has been signed (a process that, in the Ameritech region, takes months and even years because of the ILEC's intransigence), has prevented Covad from securing a single cageless collocation space, almost a year after the FCC required it. The FCC must now take steps to clarify its already clear rule to prevent Ameritech and other ILECs from continuing this blatant anticompetitive behavior.

As the nation's leading provider of competitive broadband telecommunications service using DSL technology, Covad is undertaking an aggressive collocation program with a goal of collocating in 2000 ILEC central offices by the end of this year. The more central offices we are able, both logistically and financially, to collocate in, the more broadband choice we can offer consumers. Unfortunately, incumbent LEC anticompetitive behavior is serving to deny that competitive choice by delaying, and in many cases denying, Covad's entry into ILEC premises. By taking the steps outlined above, the Commission can significantly advance its stated goal of ensuring that all consumers have access to the widest possible variety of telecommunications choice, especially in the broadband marketplace.

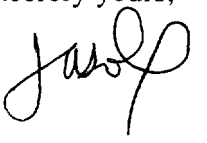
---

[14] *First Advanced Services Order* at ¶ 53.

[15] Letter dated June 18, 1999, from Ronald M. Lambert, Counsel, Ameritech Corp., to Thomas M. Koutsky, Covad Communications Company, at 3 (emphasis in the original).

Please do not hesitate to contact me if I can provide any further information.

Sincerely yours,



Jason Oxman

Covad Communications Company
600 14th Street, N.W., Suite 750
Washington, D.C. 20005
voice: 202-220-0409
fax: 202-220-0401
email: joxman@covad.com

cc: Carol Mattey, Chief, Policy Division, CCB
Margaret Egler, Assistant Chief, Policy Division, CCB
Julie Patterson, Attorney-Advisor, Policy Division, CCB
Magalie Roman Salas, Secretary, FCC
Robert Atkinson, Deputy Bureau Chief, CCB
Lawrence Strickling, Chief, CCB